

The Honorable Marc L. Barreca  
Location: via ZoomGov  
Hearing Date: June 22, 2022  
Hearing Time: 10:00 a.m.  
Reply Due: June 17, 2022

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

In re:

TIMOTHY DONALD EYMAN,

Debtor.

NO. 18-14536-MLB

REPLY TO RESPONSES REGARDING  
STATE'S OBJECTIONS TO DEBTOR'S  
CLAIMED EXEMPTIONS

Through his exemptions, Debtor Eyman attempts to remove assets from the bankruptcy estate. However, his bank accounts are clearly part of the bankruptcy estate under the terms of the bankruptcy plan devised by Debtor. His homestead exemption was fixed at \$125,000 when he filed bankruptcy and his initial exemptions. And the State objects to the IRA accounts of Debtor and Karen Eyman<sup>1</sup> being deemed exempt without them providing further statements.

**1. Bank Accounts**

Debtor Eyman is incorrect with his assertions that bank accounts held at the time of conversion are not part of the bankruptcy estate. In his conversion schedules, Debtor Eyman listed Bank of America accounts 0371, 7436, 7465 and 2926. Declaration of Tim Eyman. Docket # 427 pgs. 2-3. After the Section 341 meeting of creditors, Debtor Eyman also listed a PayPal

<sup>1</sup> The State understands that with the dissolution order being entered recently, Karen Eyman is reverting to using her maiden name, Karen Williams. However, for purposes of continuity in these pleadings and given the name on the IRA statements, the State is using her married name in this reply.

1 account. Supplement to Declaration of Tim Eyman, Docket # 430. On conversion, the Court  
2 included in its oral decision, which was incorporated into the conversion order, that property of  
3 Debtor Eyman at the time of conversion and accumulated during the Chapter 11 case was  
4 property of the estate. This determination was based upon Section 6.13 of the plan which states,

5 If upon further motion or hearing, this case is converted to a case under Chapter 7 of  
6 the Code, *all property, whether residing in the Estate, or acquired by the Debtor*  
7 *during the pendency of the Chapter 11 case as provided under Section 541 of the*  
8 *Bankruptcy Code shall automatically vest in the Chapter 7 bankruptcy estate.*  
(Emphasis added.)

8 Concurrent with this Reply, the State submits the relevant transcript excerpt. Declaration of  
9 Susan Edison, Exhibit 1.

10 A Chapter 11 Plan is construed as a contract between the parties and each term of the  
11 plan must be construed to give it meaning. *Hillis Motors, Inc. v. Hawaii Automobile Dealers*  
12 *Association*, 997 F.2d 581 (9<sup>th</sup> Cir. 1993). Therefore, Plan provision 6.13 must be enforced and  
13 given meaning so all property acquired by Debtor Eyman, including the bank accounts at issue,  
14 are included in the converted Chapter 7 Estate. Additionally, contrary to the argument by Debtor  
15 Eyman, 11 U.S.C. § 541 supports this conclusion. Section 541(a)(7) states that an estate is  
16 comprised of, “Any interest in property that the estate acquires after the commencement of the  
17 case.” Also, in *In the Matter of Copeland*, 609 B.R. 834, 841 (2019 D. Arizona), the Court held  
18 that under 11 U.S.C. § 348 (a), the Code provision that addresses conversion, that property  
19 accrued during a Chapter 11 case on conversion to Chapter 7 became property of the Chapter 7  
20 bankruptcy estate. Therefore, Debtor Eyman’s bank accounts are part of the bankruptcy estate  
21 under the plan provisions and the bankruptcy code and are available for distribution to creditors.

## 22 **2. Homestead Exemption**

23 Contrary to what Debtor Eyman seems to argue, he and Karen Eyman are entitled to only  
24 one homestead exemption. Their Mukilteo house is part of the bankruptcy estate and the  
25 homestead exemption is limited to \$125,000, the statutory maximum at the time the bankruptcy  
26

1 petition was filed on November 28, 2018. There is no additional homestead exemption for Karen  
2 Eyman. Courts have determined that when a case converts, the debtor's eligibility for exemptions  
3 remains controlled by facts existing on the petition date, not the conversion date. Thus, a debtor  
4 who amends their Schedule C post-conversion to claim revised or additional exemptions will be  
5 limited to the exemptions the debtor was eligible for under the facts in existence on the date the  
6 petition was filed. *Owen v. Owen*, 500 U.S. 305, 314, 111 S.Ct. 1833, 1838, n. 6, 114 L.Ed.2d  
7 350 (1990); *In re Wolf*, 248 B.R. 365, 367–368 (9th Cir. BAP 2000); and *In re Kuceris* 557 B.  
8 R. 6, 10 (Bankr. D MA 2016). A debtor does not have the ability to claim exemptions that did  
9 not exist as of the commencement of the case or post-petition increases in the value of the  
10 property in excess of the amount initially claimed as exempt. *In re Hyman*, 967 F. 2d 1316, 1319,  
11 n. 2 (9th Cir. 1992).

12 Finally, “the right to claim exemptions on the property vests solely in the filing spouse”  
13 and binds the nonfiling spouse. *In re Homan*, 112 B.R. 356, 359 (9th Cir. BAP 1989). Karen  
14 Eyman cannot claim exemptions in this bankruptcy and is bound by what her then spouse  
15 claimed at the time he petitioned for bankruptcy. Thus, Debtor Eyman’s initial exemption  
16 claimed on the Mukilteo home for a homestead allocation of \$125,000 cannot be changed now.

### 17 **3. Retirement Funds**

18 Debtor Eyman asserts that his IRA account qualifies as exempt under 11 U.S.C.  
19 §522(a)(3) and RCW 6.15.020. He and Karen Eyman assert the same with respect to her IRA  
20 account. She also claims that her IRA is not community property. However, at the time of the  
21 bankruptcy filing, the Eymans were married, so her IRA is a community asset. Additionally,  
22 when this bankruptcy was filed, her IRA was listed as an exempt asset. Under Washington law,  
23 there is a basic presumption that all property and income generated by both spouses during a  
24 marriage is community property. “The presumption is that an obligation incurred or an enterprise  
25 undertaken by either spouse during marriage is for the benefit of the community.” *Brubaker v.*  
26 *Hovde*, 45 Wash. App. 44, 47, 723 P. 2d 1193, 1195 (1986) and RCW 26.16.030. Therefore,

1 wages earned after marriage are community property and any debts incurred by either spouse  
2 during marriage are community debts. *In re Dickerson*, 597 B.R. 101, 108 (Bankr. W.D. Wash.  
3 2019) citing *Oil Heat Co. of Port Angeles Inc. v. Sweeney*, 26 Wash. App. 351, 353, 613 P.2d  
4 169, 171 (1980). The presumption that property is a community asset can only be overcome by  
5 clear and convincing evidence. *Oil Heat Company of Port Angeles v. Sweeney*, 26 Wash. App.  
6 at 353, 613 P.2d at 171. “The burden of proving that a debt is not a community obligation rests  
7 on the community.” *Pacific Gamble Robinson Co.*, 95 Wash.2d 341, 344, 622 P.2d 850, 853  
8 (1980). Karen Eyman has not presented any evidence that the IRA is not a community asset.

9 To date, the only supporting documentation that she has provided are statements for the  
10 fourth quarter of 2021 and the first quarter of 2022. These two statements are insufficient basis  
11 for the court to make a completely informed determination and instead, raise questions that could  
12 be settled easily with minimal effort.

13 The two IRA statements provide a summary of account transactions and holdings from  
14 October 2021 through March 2022, along with a cost-basis summary of current fund holdings  
15 showing the dates, amounts and prices of acquisition of all **current** holdings (either through an  
16 outright purchase, or reinvestment of fund distributions). Although the statements reveal that  
17 fund distributions were regularly reinvested prior to 2018, and that the account holder has now  
18 elected to reinvest distributions, the statements indicate no reinvestment of distributions between  
19 2018 and September of 2021. Edison Declaration Ex 2, Attachment of excerpts of Karen  
20 Eyman’s IRA account from the statements submitted from October 2021 through March 2022  
21 showing reinvestment history. The table below summarizes fund distributions for three of the  
22 four current fund holdings of Karen Eyman during the relevant bankruptcy time period that were  
23 apparently not reinvested in the IRA consistently with the account holder’s prior and current  
24 elections to do so. The source of the information is indicated at the bottom of the Attachment.

25 While this information regarding inconsistent elections with respect to fund distributions  
26 may not be dispositive as to whether these particular funds are exempt or not, a determination

1 with respect to either of the IRA accounts in question should not be made without a review of  
2 the statements for the relevant bankruptcy and conversion time period. A single statement is but  
3 a snapshot in time. Given that the bankruptcy dates back to November 2018, it is reasonable for  
4 a complete record to be reviewed prior to making a determination whether an IRA is exempt. As  
5 for Ms. Eyman's IRA, the State requested the year-end statements from 2019 and 2020 to  
6 confirm whether the funds were reinvested and, if not, to determine how this money was used  
7 or possibly transferred, but Ms. Eyman through her counsel refused to provide them. Such  
8 statements could be secured with a very limited effort by her contacting the account  
9 representative listed on the statements and/or by logging on to her account. Therefore, the State  
10 renews its request for the end-of-year statements for 2019 and 2020 and asks that the court order  
11 Ms. Eyman to provide them before any determination is made regarding her IRA.

12 As for Debtor Eyman's IRA, he has not provided any statements regarding his reported  
13 retirement funds. Accordingly, the State requests the IRA statements from 2018-2022 to  
14 determine whether they support his contention that his IRA qualifies as exempt and to verify  
15 that distributions from the IRA were not improperly used. Until all said statements are  
16 provided and reviewed, no determination should be made as to his account.

17 DATED this 17th day of June, 2022.

18 ROBERT W. FERGUSON  
19 Attorney General

20 /s/ Susan Edison

21 \_\_\_\_\_  
22 SUSAN EDISON, WSBA No. 18293  
23 DINA YUNKER FRANK, WSBA No. 16889  
24 ERIC S. NEWMAN, WSBA No. 31521  
25 *Assistant Attorneys General*  
26 Attorneys for the State of Washington

# ATTACHMENT

Franklin Small-Mid Cap Growth Fund Class A (FRSGX) <sup>2</sup>	
Distribution	\$/Share
12/14/2018	4.1419
12/13/2019	6.1892
12/14/2020	4.1412

First Eagle Global Fund Class A (SGENX) <sup>3</sup>	
Distribution	\$/Share
12/19/2019	3.178
12/1/2020	1.460

PIMCO All Asset Fund Class A (PASAX) <sup>4</sup>	
Dividend Date	\$/Share
6/15/2017	0.09827
9/14/2017	0.13984
12/28/2017	0.24126
3/15/2018	0.05107
6/14/2018	0.08352
9/13/2018	0.09633
12/27/2018	0.31881
3/14/2019	0.04834
6/13/2019	0.05704
9/12/2019	0.087
12/30/2019	0.15287
3/12/2020	0.02355
6/11/2020	0.06406
9/10/2020	0.13939
12/30/2020	0.1676
3/11/2021	0.38841
6/10/2021	0.31307
9/9/2021	0.4029

<sup>2</sup> <https://www.franklintempleton.com/investments/options/mutual-funds/products/4198/A/franklin-small-mid-cap-growth-fund/FRSGX#view-historical-distributions-data>

<sup>3</sup> <https://www.firsteagle.com/global-fund>

<sup>4</sup> <https://www.pimco.com/en-us/investments/mutual-funds/all-asset-fund/>